

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ORLANDO WRIGHT,

Plaintiff,

v.

DAN PACHOLKE, TINA BURGESS, DENISE
HINRICHSSEN, MAC PEVEY, ELISABETH
RASLER, WENDY STIGALL, and the
WASHINGTON STATE DEPARTMENT OF
CORRECTIONS;

Defendants.

No.

COMPLAINT

I. NATURE OF THE CASE

This is a civil rights case arising out of the arrest and re-incarceration of Plaintiff Orlando Wright—without a hearing, access to counsel, or any judicial review whatsoever—more than three years after he was released from prison, and more than a year after his maximum prison sentence had expired and he had been fully released from supervision by the Washington State Department of Corrections (“DOC”). Despite their knowledge that Mr. Wright had finished his prison sentence and that DOC had no more authority over him than they would over any other free citizen, in January 2016 the defendants issued a DOC “Secretary’s Warrant – Escape from Prison or Work Release,” falsely directing law enforcement officers across the state and country to apprehend Mr. Wright on the basis that he had “escaped” from prison. The defendants did this to Mr. Wright in an attempt to mitigate the public relations disaster caused by the disclosure in December 2015 that, since 2002, DOC had been erroneously calculating early release dates for

1 prisoners. DOC had known of the software error causing the problem since December 2012, and
2 that prisoners such as Mr. Wright were being released early as a result, but decided not to take
3 the steps necessary to correct the error.

4 Pursuant to the fictitious escape warrant, the Bothell Police Department apprehended
5 Mr. Wright on January 18, 2016. Defendants ordered him delivered to the Washington State
6 Reformatory in Monroe, where he was held for 76 days. During that time, the actions of
7 defendants caused the life Mr. Wright had built since completing his sentence to fall apart. He
8 lost his job, lost his place in a technical education program, lost his housing, and lost custodial
9 rights to his child. Mr. Wright now brings this action seeking damages for the defendants'
10 violations of his rights under the United States Constitution and Washington state law.

11 II. PARTIES

12 2.1 Plaintiff Orlando Wright is a resident of King County, Washington.

13 2.2 Defendant Dan Pacholke is the former Secretary of the Washington State
14 Department of Corrections ("DOC"). At all times relevant, Pacholke was the Secretary of DOC
15 and acting under color of law and within the course and scope of his employment.

16 2.3 Defendant Tina Burgess is a current or former employee of DOC. At all times
17 relevant, Burgess was an employee of DOC and was acting under color of law and within the
18 course and scope of her employment.

19 2.4 Defendant Denise Hinrichsen is a current or former employee of DOC. At all
20 times relevant, Hinrichsen was an employee of DOC and was acting under color of law and
21 within the course and scope of her employment.

22 2.5 Defendant Mac Pevey is a current or former employee of DOC. At all times
23 relevant, Pevey was an employee of DOC and was acting under color of law and within the
24 course and scope of his employment.

25 2.6 Defendant Elisabeth Rasler is a current or former employee of DOC. At all times
26 relevant, Rasler was an employee of DOC and was acting under color of law and within the
27 course and scope of her employment.

1 2.7 Defendant Wendy Stigall is a current or former employee of DOC. At all times
2 relevant, Stigall was an employee of DOC and was acting under color of law and within the
3 course and scope of her employment.

4 2.8 The Washington Department of Corrections is an agency of the State of
5 Washington.

6 **III. JURISDICTION AND VENUE**

7 3.1 This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

8 3.2 Venue is appropriate in this district pursuant to 28 U.S.C. § 1391 because a
9 substantial part of the events giving rise to the claims alleged herein occurred in Snohomish
10 County, Washington.

11 **IV. FACTS**

12 4.1 On November 6, 2012, DOC released plaintiff Orlando Wright from prison.

13 4.2 Mr. Wright had been serving an eight-year prison sentence for robbery. The
14 maximum expiration date for Mr. Wright's prison sentence was January 1, 2014.

15 4.3 Mr. Wright was released on November 6, 2012 based on DOC's calculation of his
16 "good-time" credit.

17 4.4 In early December 2012, less than a month after DOC released Mr. Wright,
18 Defendant Wendy Stigall, the DOC Records Manager, received an inquiry from the family of a
19 victim in an unrelated case, expressing concern that DOC was releasing their child's assailant too
20 early. Stigall discovered that for the previous ten years DOC's computer software had been
21 incorrectly calculating good-time credits for prisoners with certain sentence enhancements.

22 4.5 On December 7, 2012, after conferring with Ms. Stigall, Assistant Attorney
23 General Ronda Larson wrote an email to her supervisor and Stigall, acknowledging that the
24 question from the victim's family "revealed a problem with OMNI's calculation method for
25 sentences," which was "resulting in offenders with short base [sentences] receiving more good
26 time than allowed by statute."
27

1 4.6 Larson went on to advise DOC that although it should manually re-calculate the
2 sentence that had led to discovery of the problem to avoid a lawsuit from the victim's family, it
3 was not "necessary . . . to do hand calculations now of everyone in prison with an enhancement."

4 4.7 Instead, Larson suggested DOC wait for "the long process of reprogramming
5 OMNI for everyone else." Larson recognized that "this will result in offenders being released
6 earlier than the law allows for the time being, until OMNI gets fixed." But Larson reasoned that
7 because "DOC has been releasing them earlier for a decade . . . a few more months is not going
8 to make that much difference." Larson concluded that the problem was "not so urgent as to
9 require the large input of personnel resources to do hand-calculations of hundreds of sentences."

10 4.8 Stigall and others in DOC, including DOC Assistant Secretary Denise Doty and
11 DOC Risk Manager Kathy Gastreich, chose to follow this advice.

12 4.9 Stigall submitted a "Change Request" to DOC's IT Department on December 27,
13 2012, asking them to correct the software glitch in OMNI. But the software fix was delayed 16
14 times over the next 30 months, and DOC did not fix the programming error until January 12,
15 2016—more than three years later.

16 4.10 DOC's actions in failing to correct the sentencing calculation error and failing to
17 manually re-calculate sentences for more than three years after its discovery were negligent.

18 4.11 Had DOC chosen in December 2012 to manually check the "good-time" credits
19 for prisoners impacted by the error, it would have learned that it had released Mr. Wright 76 days
20 too early.

21 4.12 Instead, Mr. Wright went about rebuilding his life. Between November 6, 2012
22 and January 5, 2015, Mr. Wright was under community supervision by DOC.

23 4.13 During that time, Mr. Wright worked to reintegrate into the community. He
24 completed chemical dependency treatment. He obtained stable housing and work. His daughter
25 was born in March 2014. He lived with her and her mother and saw her every day. He enrolled
26 in the welding program at Renton Technical College, and also obtained a work-study job there in
27 addition to his job at the Elephant Car Wash.

1 4.14 On January 1, 2014, the maximum expiration date for Mr. Wright's prison
2 sentence passed.

3 4.15 On November 3, 2014, Mr. Wright's Community Corrections Officer, Robert
4 Herrera, met with Mr. Wright "to sign his notice to offender letter notifying him he was no
5 longer under supervision of the Department of Corrections."

6 4.16 That letter further stated: "Any conditions of supervision imposed by the
7 Department of Corrections are no longer in effect."

8 4.17 On January 2, 2015, DOC closed Mr. Wright's community supervision file.

9 4.18 DOC's "supervision closure" form noted that "[t]he offender has finished the
10 above cause's period of supervision. Therefore we have closed supervision interest in this cause.
11 The following information reflects the offender's compliance with the indicated Court ordered
12 requirements."

13 4.19 The "supervision closure" form further noted that "Mr. Wright successfully
14 completed his DOC supervision on the above cause. Mr. Wright reported as directed and
15 provided clean urinalysis tests along with clean breathalyzer tests to monitor his no alcohol no
16 drug condition."

17 4.20 DOC filed the supervision closure form with the King County Superior Court.

18 4.21 Almost twelve months later, on December 22, 2015, Governor Jay Inslee gave a
19 press conference in which he disclosed to the public the sentencing calculation error which DOC
20 had known about since December 2012.

21 4.22 In response to the public relations crisis that ensued, DOC announced that for the
22 first time, it would recalculate the sentences impacted by the error and identify offenders who
23 should be returned to prison.

24 4.23 DOC's decision to begin arresting former prisoners was made not in response to
25 discovery of the error, but in response to the disclosure of that error to the public.
26
27

1 4.24 On or about December 24, 2015, Defendant Dan Pacholke issued instructions to
2 DOC staff regarding how to determine whether a former prisoner should be returned to prison
3 based on DOC's failure to calculate sentences correctly.

4 4.25 Between January 1, 2016 and January 11, 2016, Defendants Elisabeth Rasler
5 and/or Wendy Stigall and/or Tina Burgess and/or Denise Hinrichsen reviewed Mr. Wright's file
6 and determined that Mr. Wright had been released from prison 76 days early.

7 4.26 Defendants Rasler and/or Stigall and/or Burgess and/or Hinrichsen and/or other
8 agents of the Washington Department of Corrections decided, based on Defendant Pacholke's
9 instructions, to return Mr. Wright to prison based on DOC's failure more than three years earlier
10 to calculate his sentence correctly.

11 4.27 At the time Defendants Rasler and/or Stigall and/or Burgess and/or Hinrichsen
12 and/or other agents of the Washington Department of Corrections decided to return Mr. Wright
13 to prison, they knew that:

14 4.27.1 The maximum expiration date of Mr. Wright's prison sentence had passed.

15 4.27.2 Mr. Wright was no longer under DOC supervision.

16 4.27.3 Mr. Wright's early release from prison was solely the fault of DOC.

17 4.27.4 DOC knew that it was releasing prisoners early but chose not to address
18 that error between December 2012 and December 2015.

19 4.28 Defendants' decision to return Mr. Wright to prison was negligent, outrageous,
20 and made with reckless disregard for Mr. Wright's constitutional rights to be free from
21 unreasonable seizures and not to be deprived of his liberty without due process of law.

22 4.29 On January 11, 2016, Defendants Tina Burgess and/or Mac Pevey and/or other
23 agents of the Washington Department of Corrections issued a "Secretary's Warrant: Escape from
24 Prison or Work Release" for Mr. Wright.

25 4.30 The "Escape Warrant" instructed "any sheriff, police, peace officer, law
26 enforcement officer, and community corrections officer" to arrest Mr. Wright on the basis that he
27 "has escaped from prison/work release."

1 4.31 It instructed that “pursuant to RCW 9.31.090, you are authorized and directed to
2 arrest the offender and place him or her in total confinement pending return to prison. Offenders
3 shall be detained in a county jail or equivalent local correctional facility until transport to a state
4 correctional facility can be arranged.”

5 4.32 RCW 9.31.090 provides only that “[e]very person in custody, under sentence of
6 imprisonment for any crime, who shall escape from custody, may be recaptured and imprisoned
7 for a term equal to the unexpired portion of the original term.”

8 4.33 At the time they issued the warrant, Defendants Burgess, Pevey, and the
9 Washington Department of Corrections knew that:

10 4.33.1 Mr. Wright was not “in custody.”

11 4.33.2 Mr. Wright was not “under sentence of imprisonment for any crime.”

12 4.33.3 Mr. Wright had not “escape[d] from custody.”

13 4.33.4 Mr. Wright had not escaped from prison or work release.

14 4.33.5 Mr. Wright’s maximum prison sentence expiration date had passed.

15 4.33.6 Mr. Wright was no longer under DOC supervision.

16 4.33.7 Mr. Wright’s early release from prison was solely the fault of DOC.

17 4.33.8 DOC knew that it was releasing prisoners early but chose not to address
18 that error between December 2012 and December 2015.

19 4.34 Defendants’ decision to issue an “Escape Warrant” for Mr. Wright’s arrest was
20 negligent, outrageous, and made with reckless disregard for Mr. Wright’s constitutional rights to
21 be free from unreasonable seizures, arrests without probable cause, and deprivation of his liberty
22 without due process of law.

23 4.35 On January 18, 2016, officers of the Bothell Police Department arrested
24 Mr. Wright pursuant to the “Escape Warrant” and took him to the Snohomish County Jail.

25 4.36 On January 20, 2016, Mr. Wright was transferred to the Washington State
26 Reformatory in Monroe to serve 76 days in prison.
27

3 || 4.38 DOC released Mr. Wright from prison on April 3, 2016.

4 4.39 By that time, as a direct and proximate result of Defendants' wrongful actions and
5 omissions, the life Mr. Wright had tried to build for himself had fallen apart. He had lost his jobs
6 at Elephant Car Wash and the Renton Technical College work-study program. He had lost his
7 place in the welding program at Renton Technical College. He had lost his apartment, his car,
8 and all of his personal possessions. He was homeless, and wandered the streets of Seattle for 13
9 days following his release. The mother of his child filed for a parenting plan while he was in
10 prison. Because Mr. Wright could not attend the hearing while he was incarcerated, his former
11 partner's parenting plan was unopposed, and he was denied custody and visitation rights to his
12 daughter.

4.40 As a direct and proximate result of Defendants' wrongful actions and omissions, Mr. Wright endured physical pain and suffering, and he experienced severe anguish, depression, anxiety, fear, sleep disturbances and emotional distress. His relationship with his daughter suffered long-term damage. It has taken Mr. Wright almost two years to put his life back together, including obtaining reliable transportation, employment, housing, re-enrolling in technical college, and establishing visitation with his daughter. He continues to suffer from post-traumatic stress, depression, sleep, and anxiety disorders, and he continues to experience severe fear and anxiety that he will again be re-arrested and re-incarcerated without cause or due process of law.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Federal Civil Rights Violations Under 42 U.S.C. § 1983)

25 5.1 By virtue of the facts set forth above, all the Defendants except the Washington
26 State Department of Corrections are liable for compensatory and punitive damages for
27 deprivation of the civil rights of Plaintiff Orlando Wright guaranteed by the Fourth and

1 Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983 to be free from unreasonable
2 seizures of his person.

3 5.2 By virtue of the facts set forth above, all the Defendants except the Washington
4 State Department of Corrections are liable for compensatory and punitive damages for
5 deprivation of the civil rights of Plaintiff Orlando Wright guaranteed by the Fifth and Fourteenth
6 Amendments to the Constitution and 42 U.S.C. § 1983 to be free from deprivations of liberty
7 without due process of law.

8 **SECOND CAUSE OF ACTION**

9 **(State Law Claim – False Arrest)**

10 5.3 By virtue of the facts set forth above, the Washington State Department of
11 Corrections is liable to Plaintiff Orlando Wright for compensatory damages for false arrest.

12 **THIRD CAUSE OF ACTION**

13 **(State Law Claim – Outrage)**

14 5.4 By virtue of the facts set forth above, the Washington State Department of
15 Corrections is liable to Plaintiff Orlando Wright for compensatory damages for the tort of
16 outrage.

17 **FOURTH CAUSE OF ACTION**

18 **(State Law Claim – Negligence)**

19 5.5 By virtue of the facts set forth above, the Washington State Department of
20 Corrections is liable to Plaintiff Orlando Wright for compensatory damages for negligence.

21 **VI. REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiff requests relief against Defendants as follows:

23 6.1 Compensatory damages;

24 6.2 Punitive damages from the individual Defendants on Plaintiff's claims under 42
25 U.S.C. § 1983;

26 6.3 Costs, including reasonable attorney's fees, under 42 U.S.C. § 1988 and to the
27 extent otherwise permitted by law;

1 6.4 Such other relief as may be just and equitable.

2
3 DATED this 16th day of March, 2018.

4 MacDONALD HOAGUE & BAYLESS

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